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ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Money Transmitter License of: No. 09F- BD026-BNK

**WESTERN UNION FINANCIAL SERVICES,
INC. AND GUY A. BATISTA, PRESIDENT**
12500 East Belford Avenue
Englewood, CO 80112

NOTICE OF HEARING

Petitioners.

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138 and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for October 23 and 24, 2008, at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-1210; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating money transmitters pursuant to A.R.S. §§ 6-123 and 6-131.

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office of Administrative Hearings has designated Lewis D. Kowal, at the address and phone number listed above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative

1 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
2 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
3 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
4 Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
10 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
11 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
12 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
13 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
14 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
16 made by a court reporter or by electronic means. Any party that requests a transcript of the
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
19 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
24 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
26 R2-19-122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer **within twenty (20)**
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position
3 or defense and shall specifically admit or deny each of the assertions contained in this Notice of
4 Hearing. If the answering Petitioners are without or are unable to reasonably obtain knowledge or
5 information sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which
6 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioners
7 intend to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioners
8 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised
9 in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be**
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
12 true and admitted and the Superintendent may take whatever action is appropriate, including
13 suspension, revocation, denial of Petitioners' license or affirming an order to Cease and Desist and
14 imposition of a civil penalty or restitution to any injured party.

15 Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial
16 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
17 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
18 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
19 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

20 **Persons with disabilities may request reasonable accommodations such as interpreters,**
21 **alternative format or assistance with physical accessibility.** Requests for accommodations must
22 be made as early as possible to allow time to arrange the accommodations. If accommodations are
23 required, call the Office of Administrative Hearings at (602) 542-9826.

24 **FACTS**

25 1. Petitioner Western Union Financial Services, Inc. ("Western Union") is a Colorado
26 corporation authorized to transact business in Arizona as a money transmitter, license number

1 MT 0010709, within the meaning of A.R.S. §§ 6-1201, *et seq.* The nature of Western Union's
2 business is that of a money transmitter within the meaning of A.R.S. § 6-1201(11).

3 2. Petitioner Guy A. Batista ("Mr. Batista") is the President of Western Union and is
4 authorized to transact business in Arizona as a money transmitter within the meaning of A.R.S.
5 §§ 6-1201, *et seq.*

6 3. A December 3 through December 6, 2007 examination of Western Union, and authorized
7 delegate visits on November 27, 2007 through June 19, 2008, conducted by the Department,
8 revealed that Western Union and Mr. Batista:

9 a. Failed to prominently display the authorized delegate notice, as prescribed by the
10 Superintendent, at all authorized delegate locations; specifically:

11 i. The authorized delegates who failed to prominently display the required
12 authorized delegate notices were: Broadway Liquor, 405 E. Broadway, Mesa,
13 Arizona; and Basha's #85, 1920 W. Chandler, Chandler, Arizona; and

14 ii. Failed to correct this violation from a prior examination;

15 b. Failed to keep adequate records of customers' identities for each transaction
16 involving the transmission of money in an amount of one thousand dollars
17 (\$1,000.00) or more; specifically:

18 i. Failed to record the customers' occupation, current residential address or social
19 security number for most transactions;

20 ii. The 44 groups, 154 transfers totaling \$78,522.62, listed in Attachment A to the
21 Report of Examination, were sent by the same person from the same location
22 on the same day at approximately the same time, and were received by the same
23 person at the same location on the same day, at the same payment location,
24 often within minutes of each other, and by the same cashier;

25 iii. The information required by A.R.S. § 6-1241(E) should have been collected;

26 iv. Petitioners are not only required to comply with the requirements of A.R.S.

- 1 § 6-1241(E), they must have an effective AML program to prevent, not just
2 report, structuring activity; and
- 3 v. Failed to correct this violation from a prior examination;
- 4 c. Failed to comply with the Arizona Attorney General's Geographical Targeting Order
5 ("GTO") No. 2006-02; specifically:
- 6 i. Between July 31, 2006 and June 23, 2007, Petitioners and their authorized
7 delegates failed to collect the additional customer identification data required
8 by the GTO for payout transactions of five hundred dollars (\$500.00) or more;
- 9 ii. The 343 groups, 698 transfers totaling \$303,530.94, listed in Attachment B to
10 the Report of Examination ("Attachment B"), were sent by the same person
11 from the same location on the same day at approximately the same time, and
12 were received by the same person at the same location, on the same day at the
13 same payout location, often within minutes of each other, and by the same
14 cashier;
- 15 iii. The information required by the current GTO should have been collected and
16 recorded for each receiver; and
- 17 iv. The activity listed in Attachment B continued throughout the time period of
18 July 31, 2006 through June 23, 2007. Not only are Petitioners required to
19 comply with all GTOs, they must have an effective AML program to prevent,
20 not just report, structuring activity; and
- 21 d. Failed to comply with all requirements of the Consent Order, *In the Matter of the*
22 *Money Transmitter License of Western Union Financial Services, Inc.*, No.
23 07F-BD020-SBD (the "Consent Order"), entered on August 17, 2006; specifically:
- 24 i. Failed to keep and preserve records that enable the Superintendent to determine
25 compliance with applicable laws by failing to record the required customer
26 identification information relating to transactions of \$1,000.00 or more; and

1 ii. Failed to comply with all Arizona Attorney General's Geographical Targeting
2 Orders for all transactions in the amount of \$500 or more.

3 1. Based upon the above findings, the Department issued and served upon Petitioners an
4 Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order ("Cease
5 and Desist Order") on July 29, 2008.

6 2. On August 27, 2008, the Department received a Notice of Appeal/Request for Hearing
7 from Petitioners to appeal the Cease and Desist Order.

8 LAW

9 1. Pursuant to A.R.S. §§ 6-1201, *et seq.*, the Superintendent has the authority and the duty
10 to regulate all persons engaged in the money transmitter business and with the enforcement of
11 statutes, rules, and regulations relating to money transmitters.

12 2. By the conduct set forth above in the Findings of Fact, Western Union and Mr. Batista
13 violated the following:

14 a. A.R.S. § 6-1207(C) by failing to prominently display the authorized delegate notice,
15 as prescribed by the Superintendent, at all authorized delegate locations;

16 b. A.R.S. § 6-1241(E) by failing to keep adequate records of customers' identities for
17 each transaction involving the transmission money in an amount of one thousand
18 dollars (\$1,000.00) or more;

19 c. A.R.S. § 6-1241(J) by failing to comply with the Arizona Attorney General's
20 Geographical Targeting Order No. 2006-02; and

21 d. A.R.S. § 6-1210(4) by failing to comply with the Consent Order entered on
22 August 17, 2006.

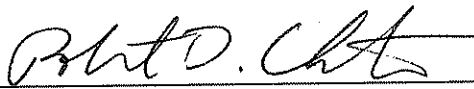
23 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
24 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
25 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
26 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and

1 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
2 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-1210; and (4) an order or any
3 other remedy necessary or proper for the enforcement of statutes and rules regulating money
4 transmitters pursuant to A.R.S. §§ 6-123 and 6-131.

5 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
6 above-described violations, the Superintendent may issue a cease and desist order pursuant to A.R.S.
7 § 6-137; affirm the July 29, 2008 Cease and Desist Order or impose a civil money penalty pursuant
8 to A.R.S. § 6-132; suspend or revoke Petitioners' license pursuant to A.R.S. § 6-1210; and order any
9 other remedy necessary or proper for the enforcement of statutes and rules regulating money
10 transmitters pursuant to A.R.S. §§ 6-123 and 6-131.

11 DATED this 11 day of September, 2008.

12 Felecia A. Rotellini
13 Superintendent of Financial Institutions

14 By 
15 Robert D. Charlton
16 Assistant Superintendent of Financial Institutions

17
18 ORIGINAL of the foregoing filed this 11th
19 day of September, 2008, in the office of:

20 Felecia A. Rotellini
21 Superintendent of Financial Institutions
22 Arizona Department of Financial Institutions
23 ATTN: Susan Longo
24 2910 N. 44th Street, Suite 310
25 Phoenix, AZ 85018

26 COPY mailed same date to:

Lewis D. Kowal, Administrative Law Judge
Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

1 Craig A. Raby, Assistant Attorney General
Office of the Attorney General
1275 West Washington
2 Phoenix, AZ 85007

3 Robert D. Charlton, Assistant Superintendent
Stephen Rosenthal, Senior Examiner
4 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
5 Phoenix, AZ 85018

6 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

7
8 Guy A. Batista, President
Western Union Financial Services, Inc.
12500 East Belford Avenue
9 Englewood, CO 80112

10 Corporation Service Company, Statutory Agent
for Western Union Financial Services, Inc.
11 2338 W. Royal Palm Road, Suite J
Phoenix, AZ 85021

12
13 Karl M. Tilleman, Esq.
Steptoe & Johnson, LLP
Collier Center
14 201 East Washington Street, Suite 1600
Phoenix, Arizona 85004-2382
15 Attorneys for Petitioners

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17 226939; PHX-AGN-2008-0418